Texas Board of Architectural Examiners 2020 Board Member Training Manual

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Chapter I. Introduction and Overview

Thank you for agreeing to serve as a member of the Texas Board of Architectural Examiners (TBAE). We appreciate your willingness to devote time and energy to the work of this Board. We hope you find your role as a board member both interesting and challenging.

The purpose of this training manual is to provide you with a resource for answering general questions relating to the Board's purpose, functions and procedures. The training manual provides an introductory framework for the conduct of TBAE's business and sets forth certain policies as issued by the Board. The training manual is not a definitive statement on administrative law or Board practice. Rather, it is a supplement that should be considered in the context of applicable laws and TBAE's enabling legislation, rules, policies and procedures. You are encouraged to contact Board counsel with any questions concerning the Board's law and its application. All other questions should be directed to the Board's Executive Director.

The Board may modify or make exceptions to this manual in its discretion and consistent with its duties and responsibilities to TBAE. This manual will be distributed to all members and will be available for reference during all Board meetings.

TBAE Staff shall review and reassess the adequacy of this manual at least once every two years and recommend any proposed changes to the Board for approval.

Board Training and Filing of Oath

An appointee to the Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program that includes the following topics:

- The legislation that created TBAE;
- The programs, functions, rules, and budget of TBAE;
- The results of the most recent formal audit of TBAE;
- The requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- Any applicable ethics policies adopted by TBAE or the Texas Ethics Commission.¹

A Board member is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.²

Before assuming the duties of office, each Board member is required to take the Oath of Office and subscribe to an anti-bribery statement and return proof thereof to the Secretary

¹ Tex. Occ. Code §1051.112.

² *Id.*

of State.3

Purpose of the Texas Board of Architectural Examiners

TBAE is a multi-profession regulatory agency that oversees the examination, registration, and professional regulation of architects, landscape architects, and registered interior designers. The agency was created in 1937 by the 45th Texas Legislature in the aftermath of the New London School explosion, which killed 295 students and teachers.

The agency carries out its duties and responsibilities by enforcing its enabling legislation, Occupations Code, Chapters 1051, 1052, and 1053, and the rules and policies that have been adopted by the Board. The Administrative Procedure Act governs the manner in which the Board carries out the creation of rules and how it adjudicates disciplinary matters.

The mission of TBAE is to serve the State of Texas by protecting and preserving the health, safety, and welfare of the Texans who live, work, and play in the built environment through the regulation of the practice of architecture, landscape architecture, and interior design.

Board members must dedicate themselves to fulfilling the purpose and mission of the Board. The primary concern of a Board member is to ensure that the professions of architecture, landscape architecture, and interior design are properly regulated, and the consumer is appropriately protected. This is paramount and takes precedence over all other considerations and concerns. The Board's purpose does not extend to advancing the professions of architecture, landscape architecture, and interior design, and the Board must not be seen, in any way, to be protecting the interests of registrants or regulated professions of the Board.

Board Composition

TBAE is governed by a Board consisting of nine members appointed by the Governor with the advice and consent of the Senate.⁴ The law requires appointments to the Board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. The Board is required to be composed of four architects, one landscape architect, one registered interior designer, and three non-registrant public members, at least one of whom is a person with a physical disability.⁵ All Board members are appointed by the Governor for a six-year term.⁶ Board member positions are voluntary and non-salaried. However, Board members are eligible for a per diem and reimbursement of travel expenses incurred in carrying out Board-sanctioned activities.⁷ The Governor designates one Board member as Chair to serve in that capacity at the

³ Tex. Const. art. XVI §1 and Tex. Occ. Code §1051.111.

⁴ Tex. Occ. Code §1051.101.

⁵ *Id*.

⁶ Tex. Occ. Code §1051.104.

⁷ Tex. Occ. Code 1051.106.

pleasure of the Governor.8 The Board elects a Vice-Chair and Secretary/Treasurer.9

Role of the Board Member/ Effective Participation

The following is a list of common characteristics for effective Board members:

- 1. They are able to work with a group to make decisions.
- 2. They understand and follow democratic processes.
- 3. They are willing to devote time and effort to the work of the Board.
- 4. They work to find alternative solutions to problems whenever necessary.
- 5. They have good communication skills.
- 6. They recognize that the goal of the Board is the service and protection of the public.
- 7. They are aware that authority is granted by the law to the Board as a whole, not to any member individually, and can only be used in open meeting by vote of the majority of board members.
- 8. They entrust the daily functioning of the agency to staff.
- 9. They delay making judgments until adequate evidence is in and has been duly discussed.
- 10. They do not let personal feelings toward others affect their decisions.
- 11. They never discuss a complaint but refer all calls or contacts to the Board office.
- 12. They read all meeting materials prior to the meeting so as to be informed and able to make thoughtful contributions to Board discussions.

Responsibilities of the Board

The Board manages its responsibilities through the employment of an Executive Director. The Board is authorized to employ an Executive Director to conduct the affairs of the Board under the Board's direction. The Executive Director manages the Board's staff (currently 19 positions). With direction from the Board and the Strategic Plan, the staff implements the Board's examination, licensing, enforcement, and administration programs.

⁸ Tex. Occ. Code §1051.107.

⁹ See Policy & Procedure EA-012, Officers Election and Committee Appointments.

¹⁰ Tex. Occ. Code §1051.151.

The Board selects the agency's executive director in the manner that it determines to be in the best interest of TBAE. In the event of involuntary separation of the Executive Director, the Board selects an interim replacement in the manner that it determines to be in the best interest of TBAE. The Board evaluates the Executive Director's performance at least once per year, according to Board policy.¹¹

The Board's responsibilities include the following:

- 1. Delineation of the basic professional qualifications and performance standards for admission to and practice of the professions of architecture, landscape architecture and interior design.
- 2. Establishment and administration of a fair and uniform enforcement policy to deter and prosecute violations of the Board's statutes and regulations.
- 3. Setting policy and procedures for the Board, its committees, task forces, and staff in carrying out the duties of the Board.
- 4. Disseminating information to consumers, licensees, and professional and educational organizations about the Board's services and activities, and rules and regulations governing the profession.
- 5. Providing oversight of the agency's budget.

Individual Board member responsibilities include:

- 1. Attendance at Board meetings. The Board is required to meet at least twice each year and may meet more often if necessary. Special meetings of the Board may be held at the call of the Chair or the Vice-Chair if the Chair is absent from the state or unable to act.¹² Generally, the Board meets four times per year. Meetings usually are scheduled for less than one day and take place in Austin. Overnight travel may be necessary.
- Participation on Board committees and task forces. Board members may be asked by the Chair to participate on one or more committees or task forces. The time commitment for committees and task forces may vary. Meetings are generally one-day and are scheduled in Austin, Texas. Overnight travel may be necessary.
- 3. Review of Board Packet. Board members are also expected to invest the time to review the "recommended reading" necessary to participate effectively in Board business. Such readings include this manual, Board and committee packets, recent studies and reports, and related material.

¹¹ Board Policy EA-009 - Executive Director Evaluation.

¹² Tex. Occ. Code §1051.108.

- 4. Acting as a representative of the Board to communicate information to the professional and educational communities. Board members may be assigned to constituency groups for which they act as a liaison.
- 5. Possible participation in meetings of the National Council of Architectural Registration Boards (NCARB), Council of Landscape Architectural Registration Boards (CLARB), and the Council for Interior Design Qualification (CIDQ). Each organization holds at least one meeting per year. NCARB committees typically meet twice per year. Meetings are usually two days, and up to two days of travel time may be required, depending on meeting location.

Resignation

If you are unable to complete your term, it is important to let the Governor's office and the Executive Director know as soon as you make a decision to resign. A letter of resignation should be sent to the Governor and copied to the Executive Director indicating the date your resignation is effective and whether you are able to serve until a replacement is named.

Removal

The Board's enabling legislation addresses the removal of a Board member from the Board.¹³ It is ground for removal from the Board that a member:

- 1) Does not hold or maintain the required qualifications (architect, landscape architect, interior designer or public member;
- 2) Is ineligible for membership as a public member under Section 1051.102;
- Is an officer, employee or paid consultant of a Texas trade association in the field of Architecture, Landscape Architecture, or Interior Design, or their spouse is an officer, manager or paid consultant of such an association;
- 4) Is required to register as a lobbyist, because of the member's activities for compensation on behalf of Architects, Landscape Architects, or Interior Designers:
- 5) Cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- 6) Is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the Board.

Under the law, if the Executive Director has knowledge that a potential ground for removal exists, he or she must notify the presiding officer of the Board. The presiding officer shall then notify the Governor and the Attorney General that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the Executive Director shall notify the next highest-ranking officer of the Board, who shall then notify the Governor and the Attorney General. Membership on the Board does not prohibit a Board member from performing any work or providing any service on a state, county, municipal, or other public building, work for a fee, or other direct compensation.¹⁴

¹³ Tex. Occ. Code §1051.105.

¹⁴ Tex. Occ. Code §1051.110.

Chapter 2. Board Meetings

Open Meeting Law

Board meetings are subject to the <u>Open Meetings Act</u>. The Open Meetings Act was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions.¹⁵ The authority vested in the Board may be exercised only in a meeting of a quorum of its members, which is defined as a majority of the number of members fixed by statute¹⁶. Thus, a quorum of TBAE occurs in the presence of five members. The Board may not act unless a quorum of the governmental body is present.

Notice of Board Meetings

The Open Meetings Act requires written notice of all meetings. Section 551.041 of the Act provides: "A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body." Governmental actions taken in violation of the notice requirements of the Act are voidable.¹⁷

The Board is required to provide notice of a meeting to the Secretary of State. ¹⁸ The Secretary of State posts the notice on the Internet. The notice must be posted seven days before the Board meeting. ¹⁹ The notice that the Board provides is the agenda of the meeting.

What Constitutes a Meeting under the Open Meetings Act?

Board members must consider that any communications relating to Board matters, made between a quorum of them in person, or by telephone or email, could constitute a "meeting" as defined under the Open Meetings Act²⁰, even if the gathering of the quorum occurs outside of a scheduled Board meeting. If Board business is discussed by a quorum of Board members, without notice to the public, the Open Meetings Act is violated. For example, if a quorum of the Board members assembles in an informal setting, such as a social occasion, it will be subject to the requirements of the Act if the members discuss public business or policy.²¹

To avoid violations of the Open Meetings Act, consider the following "best practices":

- 1. Be aware of the possibility of a quorum. If a quorum is present, and notice of a meeting has not been given, avoid discussing Board business. Additionally, avoid discussing Board business before the start of a Board meeting or during breaks.
- 2. Avoid the possibility of a "walking quorum." A walking quorum occurs when Board

¹⁵ Tex. Govt. Code §551.002.

¹⁶ Tex. Govt. Code § 311.013.

¹⁷ Tex. Govt. Code §551.141.

¹⁸ Tex. Govt. Code §551.048.

¹⁹ Tex. Govt. Code §551.044.

²⁰ Tex. Govt. Code §551.001(4).

²¹ See Govt. Code §551.001(4)(B).

members discuss Board business in a series of groups less than a quorum, with the resulting total number of Board members sharing in the series of conversations being greater than a quorum. Under certain circumstances, this is a violation of the Open Meetings Act.²²

- 3. The Open Meetings Act may be violated without an in-person meeting. Conference calls or emails, or a series thereof, in which a quorum of the Board discusses Board business would be considered a meeting for the purposes of state law, subject to all notice requirements.²³
- 4. When conducting a Board meeting, avoid discussions of items not included on the agenda. If an item has not been noticed to the public, then it should not be discussed at a Board meeting. It is acceptable to request that such a topic be placed on the agenda for the following meeting.

Another issue for Board member consideration is the fact that emails between members could be considered public records subject to production under the Public Information Act. The best practice for Board members is to refrain from emailing or calling one another concerning business that might come before the Board. If you have a question about a case or issue before the board, please contact board staff.

Executive Session

Under limited circumstances, the Board may go into closed meeting (executive session) to deliberate in private away from the public. There are several situations in which an agency is authorized to hold an executive session. The most frequent justifications for executive session are as follows:

- 1. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee.²⁴
- 2. To seek the advice of counsel about pending or contemplated litigation, a settlement offer, or discussions of a matter in which the attorney's duty to the agency conflicts with discussion of the matter in a public meeting.²⁵

If the Board convenes in executive session, certain procedures must be followed. First, the Board may not meet in executive session unless a quorum of the Board first convenes in an open meeting. Additionally, prior to entering executive session, the presiding officer must publicly identify the section or sections of the Act under which the executive session is held. Furthermore, the Board may not take a vote in executive session; rather, a final action, decision, or vote on a matter deliberated in executive session must occur in an open meeting that is held in compliance with the Open Meetings Act. A governmental body has discretion to include in an executive session any of its officers and employees whose participation is necessary to the matter under consideration.

²² Tex. Govt. Code §1051.143.

²³ Tex. Govt. Code §1051.001(2).

²⁴ Tex. Govt. Code §551.074.

²⁵ Tex. Govt. Code §551.071.

²⁶ Tex. Govt. Code §551.101.

²⁷ Tex. Govt. Code §551.102.

Convening in executive session should be avoided unless compelling reasons exist to employ the procedure. Entry into executive session could arouse public suspicion, especially among those who have an interest in the subject of the discussion. Executive session could increase the likelihood of litigation by such parties, and the Board could be assessed costs of litigation and attorney's fees in such suits.²⁸

Violations of the Open Meetings Act

The courts strictly construe the Open Meetings Act in order to promote openness in government. A Board member could be subject to criminal misdemeanor liability for knowingly participating in an unauthorized closed meeting (reasonable reliance upon an opinion by the Board's counsel could be a defense under this provision).²⁹ In addition, the courts could determine that an action taken in violation of the Act is null and void.³⁰ Other consequences could include embarrassment and loss of the public's trust.

Conduct of Meetings/Quorum

The Chair of the Board conducts meetings. All members of the board have voting privileges. Members must be present at the meeting when an issue is being discussed in order to vote on the issue. Members are asked to abstain from voting on an issue or from hearing a case when the potential for conflict of interest is present (see below).

Meeting Materials

Information and data that are important to the Board's understanding of the business to be conducted at a Board or Committee meeting should generally be distributed in writing to the members at least two weeks before the meeting where practicable, and members should review these materials in advance of the meeting.

Participation

It is important that Board members prepare for meetings by reading reports, proposals, and other documents prepared by staff. If you feel that you do not have enough information to make an informed decision, you are encouraged to ask for staff assistance. Always feel free to express your opinion.

Board members shall seek recognition from the Board Chair to address the Board or a person presenting information to the Board. Upon recognizing the member, the Chair shall state the member's name for the record. Board members shall maintain a respectful atmosphere at all times during Board meetings.

²⁸ Tex. Govt. Code §551.142.

²⁹ Tex. Govt. Code §551.144.

³⁰ Tex. Govt. Code §551.141.

Board Member Attendance at Board Meetings

Regular attendance at meetings is essential for the smooth functioning of the board and administrative staff. You are responsible for notifying the Chair if you are unable to attend a Board meeting. Absence, even with prior notification, should be avoided. Please note that Board meeting minutes contain detailed records of Board member attendance to demonstrate compliance with quorum requirements and to record voting results.

Public Attendance at Board meetings

In accordance with the Open Meetings Act, Board meetings are open to the public. Under the Board's enabling legislation, the Board is required to develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of TBAE.³¹ To promote participation by the public, the Board schedules a public comment period during each Board meeting in which the public may address any subject relating to the business of the Board.³² Each member of the public is allotted five minutes to make a presentation to the Board.

The Board must comply with the requirements of the Open Meetings Act in responding to comments from the public at Board meetings. If a member of the public or of the governmental body inquiries about a subject for which notice has not been given as required by the Texas Open Meetings Act, Board members or staff may respond with a statement of specific factual information given in response to the inquiry or a recitation of existing policy in response to the inquiry. However, any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.³³

Agenda Items

The Board Chair collaborates with the Executive Director to establish the agenda for each Board meeting. Any Board member may submit a request to the Chair to include an item on the Board meeting agenda. Such requests must be submitted at least one month prior to a Board meeting.

Discussion of topics not included on the agenda constitutes a violation of the notice provisions of the Open Meetings Act and should be avoided.

Robert's Rules

The Board Chair is responsible for ensuring that Board meetings proceed with appropriate order and decorum in accordance with Robert's Rules of Order as implemented by Board Rule §7.5. The Board Chair, in consultation with TBAE's General Counsel, resolves any questions relating to parliamentary procedures.

Record of Meetings

Section 551.021 of the Government Code requires a governmental body to prepare and keep minutes or make a recording of each open meeting of the body. The minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken. The minutes and recordings of an open meeting are public records and must be made

³¹ Tex. Occ. Code §1051.254.

³² 22. Tex. Admin. Code §7.6.

³³ Tex. Govt. Code §551.042.

available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.³⁴

In compliance with these provisions, the Board keeps minutes of each Board meeting. The minutes are a summary, not a transcript, of each Board meeting. They are prepared by Board staff and submitted for review and approval by Board members as required by law. Board minutes are approved at the start of the next scheduled meeting. When approved, the minutes serve as the official record of the meeting and may be disseminated to other parties. Because meetings are open to the public and the minutes are available by request, board members should be cognizant of the public nature of their statements at Board meetings.

³⁴ Tex. Govt. Code §551.022.

Chapter 3. Ethical Issues and Liability

Impartiality and Conflict of Interest

As public servants, Board members owe a responsibility to the people of Texas in the performance of official duties. This guide sets out laws that govern conduct as a public servant. Please bear in mind that ethical conduct involves more than merely following these laws. As a public servant, you should act fairly and honestly and should avoid creating even the appearance of impropriety.

The legislature has adopted the following standards of conduct³⁵ for state officers and employees:

A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

Under Government Code §572.058, if a Board member has a private or personal interest in a measure, proposal, or decision pending before the board, the board member must disclose that fact to the rest of the board in an open meeting and must refrain from voting or otherwise participating in the matter. This is known as "recusal."

Bias

Even though a Board member may not have a direct personal interest in a matter, they may need to consider recusal due to bias or prejudice, or the appearance of bias. Bias could occur in consideration of disciplinary matters wherein a Board member knows the Respondent or a

³⁵ Tex. Govt. Code §572.051.

complainant or has some other connection to a case, such as relationships between firms or other professional relationships. Board members should consider recusal if their consideration of a matter could be influenced by a relationship with an involved party, or if the appearance of such bias could reasonably be expected.

To avoid the appearance of bias or favoritism, Board members must conduct themselves in an impartial and objective manner when conducting Board business. This necessitates a careful choice of words when discussing issues at Board meetings, which are recorded as part of the permanent record of Board proceedings. This neutrality must continue when conducting committee meetings and engaging in any communications related to Board business.

Recusal

If a Board member does have a conflict of interest or appearance of bias in a Board matter, recusal from discussion and voting on the matter is the appropriate course of action. If recusal is undertaken, the Board member should state the recusal on the record and identify the source of the conflict. Even if actual bias does not exist in a case, Board members should consider recusal if participation in the matter would give even the appearance of a conflict. This helps to ensure public trust and confidence in the agency. In the event of recusal, a Board member cannot participate in either the discussion or vote regarding that case. If you feel there is the potential for a conflict of interest in any situation related to Board business, you should discuss the details with the Executive Director.

Ex Parte Communication

Generally, ex parte communication is communication between a decision-maker and one party to an action without the opportunity for participation by the other party. For the Board's purposes, an example of an ex parte communication would be discussion between a Board member and staff of a disciplinary case outside of a Board meeting. Under the Administrative Procedures Act, Board members who will be making a decision on a contested case are prohibited from having discussions with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.³⁶ However, a Board member *may* communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.³⁷

If an applicant for examination or licensure, a respondent in a disciplinary matter, or a respondent's attorney directly contacts you, either verbally or by mail, you should end the communication immediately and refer the person to Board staff. If documents are received, please send them to the Executive Director at the Board office without reading them.

Contact with ARE and Licensure Candidates

Board members should not intervene on behalf of a candidate for any reason. Please forward any contacts or inquiries from candidates to the Board office.

Gifts of any kind to Board members from a candidate are prohibited.

³⁶ Tex. Govt. Code §2001.061.

³⁷ *Id.*

Communication/Requests for Information

Any requests for information or interviews by the media must be referred to the Board office. Board members must not discuss any complaint or investigation in person or on the telephone. Reporters' requests for information in such matters must be made in writing to the Board office and will receive a written response. All communications from attorneys representing respondents or complainants, as well as all inquiries from respondents regarding the substance of a case, must be referred to Board counsel.

It is the policy of the Board that only the Chair or the Chair's designee may speak on behalf of the Board as an entity. The Executive Director or designee may speak on behalf of the staff. No member shall make any representation on behalf of the Board unless authorized by the Chair or the Board. When so authorized, the Board member's representations must be consistent with accepted positions and policies of the Board.

Inquiries from Governor's Office or Legislature

Board members may respond to inquiries from the Governor's office or a member of the Legislature. Any such contacts related to agency business should be disclosed to the agency. If a member of the Legislature requests documents related to TBAE business, the Board member will coordinate the production of such documents with the Executive Director.

When interacting with members of the Legislature, Board members must use caution not to endorse or oppose any legislation in the name of the Board. Board members may take positions on legislation, but may do so only as an individual, and not as a representative of the Board.

Public Speaking Engagements

Board members are encouraged to accept invitations to speak at community events and other public forums. Board members are expected to ensure that presentations accurately reflect Board and TBAE policies and activities and that any personal opinion expressed by the Board member is clearly identified as such and not the position of the Board. Board members should inform TBAE in advance of their speaking engagements and coordinate any presentation materials through the Executive Director.

Respectful Conduct

It is recognized that members bring to the Board diverse backgrounds, skills, and experiences and that members will not always agree with one another on all issues. Nonetheless, all debates should take place in an atmosphere of mutual respect and courtesy and in accordance with Robert's Rules of Order. The authority of the Chair must be respected by all members.

Board Solidarity

Board members acknowledge that properly authorized Board actions must be supported by the Board as a whole. It is important that the Board speaks with one voice. Members may disagree with a decision of the Board but are expected to abide by and support the implementation of any action duly approved by majority vote.

Obtaining Advice of Counsel

Requests to obtain outside opinions or advice regarding matters before the Board may be made through the Chair and the General Counsel. Note that the General Counsel is limited to providing counsel on Board matters and cannot provide personal legal advice to Board members.

Requests for Records Access

In order to avoid even the appearance of impropriety, Board members are not allowed access to applicant or registrant records except when specific, verified reasons exists. Records or copies of records may not be removed from the Board's office.

Board Member Disciplinary Actions

Board members are not immune to incurring disciplinary action before the Board. A complaint against a Board member will be investigated in the same manner as it would be with any other registrant. If the matter goes through the hearing process, a hearing officer may be appointed to hear the matter. The hearing officer would then reach a decision that would be approved or disapproved by the Board.

Board Member Liability and Insurance

Board members can be sued in two distinct capacities.

First, a board member may be sued in an individual capacity. Board members enjoy certain protections from personal liability in lawsuits. One type of protection is the doctrine known as qualified immunity (federal claims) or official immunity (state claims). Under qualified immunity, government officials are exempt from suit if they acted in an "objectively reasonable" manner in light of law that was "clearly established" at time of act. For official immunity against state claims, officials are immune from suits that arise from the performance of their discretionary duties in good faith as long as they are acting within the scope of their authority. Note that reliance on the advice of counsel can help establish good faith in these cases. Another protection board members enjoy is an agency insurance policy that covers liability up to \$3,000,000. Finally, Board members may qualify for the limited right to indemnification by the state. Indemnity protection is afforded to board members for acts and omissions taken in the course and scope of their service in cases that are based on constitutional, statutory and even negligence grounds, or when the attorney general determines that it would be in the interest of the state. The only claims excepted are those based on acts taken in willful or gross negligence, bad faith, conscious indifference, or reckless disregard.

Second, a board member may be sued in an official capacity. In such a case, the state pays any adverse judgment. When a board member is sued in their official capacity, it is as though the office they hold has been sued. If a Board member leaves office during a pending suit, the person who replaces the Board member is substituted into the suit. The doctrine of sovereign immunity protects a board member sued in an official capacity from suit and liability unless immunity is waived. Examples where immunity has been waived are under alleged violations under the United States and Texas Constitutions (Commerce Clause, Freedom of Speech, etc.), federal antitrust laws, the Texas Tort Claims Act, and the Whistleblower Act. It is important to note that although sovereign immunity may be waived, it does not mean that individual immunity is waived.

The attorney general represents board members in civil lawsuits. TBAE must notify the Office of the Attorney General within 10 days of service of a suit. Board members have the right to be co-represented by a private attorney of their choice, at their own expense. As long as a board member wishes to have state indemnification, the assistant attorney general assigned to the case remains the attorney in charge of the defense. State defendants who choose to retain private co-counsel should inform the Office of the Attorney General of this decision as soon as possible.

Chapter 4. Licensure

Establishing Requirements for Registration by Examination

Each of the three occupations regulated by TBAE have three components for initial registration by examination: education, experience, and examination. The eligibility requirements for the professions are described in Board Rules 1.21, 3.21, and 5.31.

Applicants for architect registration must (1) have a professional degree from an architectural education program accredited by the National Architectural Accreditation Board (NAAB) or a foreign program substantially equivalent to a NAAB accredited program,³⁸ (2) successfully demonstrate completion of the Architectural Experience Program (AXP); and (3) successfully complete the architectural registration examination (ARE). See Rule §1.21.

Applicants for landscape architect registration must demonstrate completion of (1) a professional degree from a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB)³⁹ or a foreign program substantially equivalent to landscape architectural program; (2) at least two years' actual experience working directly under a licensed landscape architect as defined under Board Rule § 3.191; and (3) successfully complete the Landscape Architectural Registration Examination (LARE) discussed below. See Rule §3.21.

Applicants for registered interior design registration must (1) demonstrate that the Applicant has satisfied the educational and professional experience eligibility requirements adopted by the Council for Interior Design Qualification (CIDQ) to sit for the NCIDQ examination, and (2) successfully complete the NCIDQ examination or a predecessor or other examination deemed equivalent by CIDQ. More information can be found in Board Rule §5.31.

Completion of the Experience Requirement for the Three Professions

Applicants for architecture registration by examination must complete the Architectural Experience Program (AXP). AXP is a comprehensive training program created to ensure that interns in the architecture profession gain the knowledge and skills required for the independent practice of architecture. The predecessor to AXP was created in the 1970s in a joint effort between the National Council of Architectural Registration Boards (NCARB) and the American Institute of Architects (AIA). The program is administered by NCARB.

The Architectural Experience Program is an essential step in the path to become an architect. Through the AXP, interns will apply their formal education to the daily realities of architectural practice, acquire comprehensive experience in basic practice areas, explore specialized areas of practice, develop professional judgment, and refine their career goals.

Interns document their training hours through the Online Reporting System, a reporting system created by NCARB that allows interns to document their experience in various training areas directly into their online NCARB Record. Interns will identify their supervisor in each

³⁸ See Rule §1.21 for more detailed requirements regarding programs that are accredited by NAAB after the applicant's accreditation

³⁹ See Rule §3.21 for more detailed requirements regarding programs that are accredited by LAAB after the applicant's graduation

report and when a report is submitted, a notification will be sent to the supervisor for approval.

Similarly, applicants for interior design registration verify their experience with the exam provider, CIDQ, to qualify for the exam and, in turn, state registration. The number of hours required to qualify for the examination depends on the educational background of the applicant and can range from 3,520 to 7,040 hours. More detail can be found on CIDQ's website.

As for landscape architect applicants, TBAE does not rely upon an outside program such as NCARB or CIDQ to determine whether the experience requirement has been completed. Rather, landscape architecture applicants send their documentation directly to Board staff, who determines whether the submitted experience qualifies under Board Rules §§ 3.21 and 3.191.

Architect Registration Examination (ARE)

The Architect Registration Examination (ARÉ) is developed by the NCARB. The ARE is used by U.S. jurisdictions as the registration examination for candidates seeking architectural registration. It is also accepted by select Canadian provincial and territorial architectural associations for registration.

The ARE assesses a candidate's knowledge and skills to provide various services required in the practice of architecture. The ARE concentrates on the professional services that affect the public's health, safety, and welfare. The ARE assesses a candidate's qualifications in exercising the skills and judgment of a generalist working with numerous specialists. In short, the objective is to reflect the practice of architecture as an integrated whole.

ARE 5.0, the current version of the test, consists of the following six divisions:

- 1. Practice Management
- 2. Project Management
- 3. Programming & Analysis
- 4. Project Planning & Design
- 5. Project Development & Documentation
- 6. Construction & Evaluation

Landscape Architect Registration Examination (LARE)

The LARE is designed to determine whether applicants for landscape architectural licensure possess sufficient knowledge, skills and abilities to provide landscape architectural services without endangering the health, safety and welfare of the public.

Successful completion of the LARE is required for licensure as a landscape architect in the United States, Puerto Rico and the three Canadian Provinces (Alberta, British Columbia and Ontario) that license landscape architects.

The LARE is the same across jurisdictions. Administration dates are established by CLARB and administered at convenient locations throughout North America. All exams are uniformly graded by CLARB. The LARE consists of four sections; each section receives a "pass or fail" score independent of the other sections, and all sections must be passed in order to be

granted registration.

The NCIDQ Exam

The NCIDQ Examination consists of three separate exam sections, the Interior Design Fundamentals Exam (IDFX), the Interior Design Professional Exam (IDPX), and the Practicum Exam (PRAC), that measure a candidate's proficiency in interior design principles and application of knowledge to protect public health, safety and welfare. Two of the exams, IDFX and IDPX, are multiple choice exams. The third, the Practicum Exam, utilizes case studies to assess a candidate's ability to synthesis information related to the design process and make a judgement using the resources provided.

Renewals and Continuing Education for the Three Professions

All registrants are required to meet and report compliance with continuing education requirements prior to annual renewal of registration. In order to administer continuing education requirements, TBAE utilizes an auditing system under which a random sample of renewing registrants is selected to have their continuing education records analyzed by staff. The procedure is as follows:

- 1. <u>Renewal procedure</u>. A renewal application is available on TBAE website in which the registrant may certify his or her completion of the required number of Continuing Education Hours (CEU's). Registrants may also make this certification by renewing online.
- 2. <u>Audit Selection and Documentation</u>. Each month, the Board randomly selects a sample of recently renewed registrants to undergo an audit to determine whether continuing education has been completed as reported. Registrants selected for audit must supply proof of continuing education activities as required by Board rules. This documentation is required to be submitted to the Board office within thirty (30) days of the postmark date of the audit notice.
- 3. <u>Review by Board Staff</u>. The submitted records are reviewed by Board staff for compliance. If the registrant has completed sufficient continuing education in subjects pertinent to the Health, Safety and Welfare (HSW) and provided proof thereof, Board staff will approve the audit. If necessary, Board staff may request additional information or evidence may be requested of the registrant by the Board.
- 4. <u>Disallowance</u>. If staff determines that proof of completion of continuing education requirements has not been shown, the registrant has 60 days after such notification to either substantiate the original claim or earn other credit to meet the minimum requirements. A registrant failing to supply the requested records within this time frame will be deemed non-compliant and may be subject to disciplinary action.
- 5. <u>Review by Board Members</u>. If staff determines that a registrant is not in compliance with continuing education requirements, the imposition of an administrative penalty or other action will be brought before the Board for review at the next Board meeting.

Chapter 5. Laws and Regulations

Statutes and Regulations – How are they different?

There are two types of law which govern the operation of the Board: statutes and rules (also known as regulations). Statutes are enactments of the legislature. The statutes create the Board and set requirements on issues like membership of the board, licensure standards, and grounds for disciplinary action. They also give the Board the power to promulgate rules to carry out the purposes of the statute.

Rules, on the other hand, have the effect of law but are written and adopted by the Board. Rulemaking is the means by which the Board carries out the intent of the Legislature on matters that may be considered too specific to be addressed in the statute itself. Rules, also known as regulations, must be tied to a specific grant of authority by the legislature; the Board cannot adopt rules on topics that are outside the areas in which the legislature has granted regulatory authority. Examples of rules are those governing the way the board conducts meetings and hearings, and those that build on basic legislative requirements for licensure and discipline. The Board's rulemaking authority is subordinate to the legislature's authority; in the event of a conflict between a statute and a rule, the statute controls.

Changing Statutory Law – The Board's Role

The modification of statutory law is the responsibility of the legislature. Here, the Board's role is limited, as the agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure. ⁴⁰ For this reason, employees or officers of TBAE must refrain from offering support or opposition to any legislation on behalf of the Board. If a Board member chooses to express support or opposition to a legislative matter, the Board member must make clear that this activity is undertaken in an individual capacity and that the Board member is not speaking on behalf of the Board.

Note that Government Code §556.006 does not prevent a state officer or employee from using state resources to provide public information or to provide information responsive to a request. Commonly, such a request might come from a legislator or committee inquiring about the agency's activities, and responses could range from written reports to the provision of testimony by a Board member, the executive director, or other staff.

Rulemaking

The adoption or amendment of rules is known as "rulemaking." Rulemaking is governed under Chapter 2001 of the Administrative Procedure Act. In order to engage in rulemaking, the Board must follow certain legal requirements. Generally, the procedure for rulemaking by the Board is as follows:

1. <u>Identification of issue.</u> The identification of issues to be resolved through rulemaking may occur through a number of processes. Often, staff will identify an issue with an existing Board rule that should be addressed through amendment. Alternatively, a Board member may identify an issue with an existing Board rule, or a topic that requires a rule to protect the public. More commonly, the agency is required to undertake rulemaking in response to legislation that has been passed by the

⁴⁰ Tex. Govt. Code §556.006.

legislature. Finally, members of the public may petition the Board to engage in rulemaking pursuant to Occupations Code §2001.021 and Board Rule §7.7.

- 2. Consideration of rulemaking by the rules committee. Once a topic has been identified, the matter may be placed on the agenda of the Rules Committee for consideration. The determination of whether to place an item on the agenda for the rules committee is a collaborative effort between staff and the Board and rules committee chairs. The rules committee is appointed by the Board chair to engage in preliminary consideration of Board rules prior to consideration by the full Board. If a rulemaking action is brought before the rules committee, staff will often write a draft rule in advance of the committee meeting and amend that draft as directed by the committee. Alternatively, the Committee will engage in discussion of a topic, and staff will create a draft rule based on these discussions.
- 3. Consideration of rule proposal by the Board. Following the rules committee meeting or other determination that rulemaking should move forward, staff will finalize a draft rule for consideration by the full Board at the next Board meeting. At the meeting, staff will provide the Board members with a copy of the proposed rule, associated statutes, and any other information relating to the rule. Staff will answer any questions from the Board. After the rule has been considered, a motion may be made to propose the rule, with the majority vote controlling. If the motion to propose the rule is defeated, staff may be given guidance on how to amend the draft to gain the Board's approval. If the motion passes, the draft rule moves forward to proposal.
- 4. <u>Submission of Proposed Rule to the Office of the Governor</u>. According to an August 27, 2019 letter from Governor Greg Abbott, state agencies are required to submit proposed rules for consideration by the Governor's office prior to publishing the proposed rule in the Texas Register. Under this process, the Board submits the Notice of Proposed Rule as well as the agency's internal analysis of the rule to the Governor's office policy advisor assigned to the agency.

Additionally, under Occupations Code Chapter 57, the Board is statutorily required to submit certain rules for review by the Governor's Regulatory Compliance Division. The purpose of this review is to preserve certain protections against federal antitrust liability. Under this requirement, the Board is required to submit any proposed rules that affect market competition to the Regulatory Compliance Division. During this review, the division is required to conduct a thorough, independent review of each proposed rule to determine: if the effect of the proposed rule on market competition is consistent with state policy as established by the applicable state agency's governing statute; and whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action. After review, the division must either approve the proposed rule or reject the proposed rule and return the rule to the Board with instructions for revising the rule to be consistent with applicable state policy. The Board may not finally adopt or implement a proposed rule required to be submitted for review by the division unless the division has approved the rule.

5. <u>Rule proposal</u>. Following approval by the Board, rulemaking is formally initiated by publication of the agency's notice of a proposed rule in the Texas Register. Under

Government Code §2001.023, the notice of a proposed rule must be published a minimum of 30 days in advance of the intended adoption date of the rule. The notice must contain certain information, including a brief explanation of the proposed rule; the text of the proposed rule; a statement of statutory authority for the proposed rule and the statutory provision affected by the proposed rule; a fiscal note for each year of the first five years that the rule will be in effect; a note about public benefits and costs for each year of the first five years that the rule will be in effect; the local employment impact statement, if required; and a request for comments on the proposed rule. The general counsel is responsible for the preparation of the notice of proposed rule and publication of the notice.

- 5. <u>Comment period.</u> The public is entitled to notice of a proposed rule for at least 30 days prior to adoption. The notice period must give all interested persons a reasonable opportunity to comment on the rule and to submit data, views, or arguments, orally or in writing.⁴² If certain requirements are met, the Board may be required to hold a public hearing on a proposed rule.⁴³
- 6. <u>Responding to comments.</u> The Board must fully consider all written and oral submissions concerning the proposed rule.⁴⁴ The agency may choose to amend the rule in response to comments. If the change is minor, the Board may move forward to adoption. However, if the Board changes a rule in nature or scope so much that it could be deemed a different rule, the process may have to start over.
- 7. Adoption of the rule. At the next Board meeting following expiration of the comment period, the Board will consider adoption of the proposed rule. Majority vote controls on a motion to adopt a rule. If the rule is adopted, the agency must adopt an order that includes certain information, including a reasoned justification of the rule, a statement of the authority under which the rule is adopted, and a legal certification. The reasoned justification must include a summary of received comments; the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption; a summary of the factual basis for the rule as adopted that demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and the reasons why the agency disagrees with party submissions and proposals. As

Policies – How are they different from Statutes and Regulations?

The Board has also adopted policies that govern its operations. A policy is informative and descriptive but does not carry the force of law. It establishes a plan or a set of guidelines to be followed by the Board in the conduct of its business. A licensee cannot be sanctioned for failing to adhere to a board policy.

Policies that affect a large segment of the regulated or general public (rather than an

⁴¹ Tex. Govt. Code §2001.024(a).

⁴² Tex. Govt. Code §2001.029.

⁴³ *Id.*

⁴⁴ *Id*.

⁴⁵ Tex. Govt. Code §2001.033.

⁴⁶ *Id*.

individual or a narrow select group) should be developed and promulgated into rules.

Related Laws and Regulations

Sunset - Sunset is the regular assessment of the continuing need for a state agency or program to exist, undertaken by the Texas Sunset Commission. State law provides that prior to the scheduled cessation date of an agency, the agency's functions are scheduled for review by the Commission. During sunset review, an agency is examined to determine whether its licensing and regulatory functions continue to be necessary for the public interest and whether the actions and policies of the Board conform to certain standards. During this process, Sunset staff reviews records of past operations and makes recommendations for changes in operation and law that are intended to improve efficiency and effectiveness.

Once this analysis is completed, a draft report is circulated to the Board and Sunset staff for comments before it is submitted to the appropriate committees of the legislature. If the legislature identifies a continuing need and justification for the agency, it will be reauthorized for a designated period, typically 12 years.

The Texas Public Information Act - Government Code Chapter 552, also known as the Public Information Act, generally mandates public access to information that is collected, assembled or maintained in connection with the transaction of the official business of governmental bodies. Information subject to the Act includes paper documents, recordings, computer files, photographs and many other forms of information. Exceptions to disclosure protect a wide range of interests, including individual privacy and considerations of public safety. If a governmental body receives a request for information, in most cases, it must either provide the information or seek an attorney general's decision regarding the applicability of an exception to disclosure.

How does the Public Information Act Affect Board members?

First, it is important to remember that any written communication by a Board Member regarding official business is subject to the Public Information Act. Therefore, the Board member must use sound judgment and avoid engaging in communications that could embarrass the Board member or the Board.

Second, a Board member could find the processes used to implement the Public Information Act to be cumbersome. For example, if a Board member uses personal or business email to conduct Board business, any public information request inquiring into such emails would require a search through the Board member's emails. In conducting such a search, Board staff would attempt to use the least invasive process for doing so, but nonetheless, this could be viewed as an unwanted intrusion. For these reasons, if a Board member intends to use email to conduct Board communications, it may be advisable to utilize a dedicated email address that is separate from the Board member's personal or business address and to limit all discussions of Board business to this account. That way, if the Board receives a public information request, responding to the request can be completed by searching through that email account alone. If a Board member wishes set up a separate email account for this purpose, staff is available to help with this task upon request.

Chapter 6. Enforcement/Compliance

Board Powers Relating to Disciplinary Matters

State law gives the Board general authority to take enforcement action in response to violations of the enabling acts for architecture, landscape architecture, and interior design.⁴⁷ This includes the authority to suspend, revoke, or refuse to renew registrations issued by the Board, as well as the imposition of administrative penalties against registrants and non-registrants who violate the Board's laws relating to architecture and landscape architecture.⁴⁸ The Board is also authorized to order a registrant to pay restitution to a consumer, not to exceed the amount the consumer paid the registrant for a service.⁴⁹

Complaint Procedures

When the Board receives a complaint, it is initially reviewed by the Managing Investigator to determine whether there is probable cause to believe that an actionable violation of agency statutes or rules might have occurred. When probable cause exists, a case is opened, assigned to an investigator and the respondent is notified of the allegations. The Respondent is given an opportunity to respond to any cited violations. The investigator contacts the complainant, respondent and witnesses, and collects evidence as necessary to investigate the matter fully. If technical expertise is required, a subject matter expert may be asked to review the case. If staff is reviewing whether a registrant, candidate, or applicant has practiced in a manner that is reckless, grossly incompetent, or dishonest, the evidence must be reviewed by a person registered by the Board in the relevant profession prior to the matter being referred for a formal hearing.⁵⁰

If the completed investigation results in a determination that disciplinary action is appropriate, the case file is forwarded to the Board's legal counsel. If counsel agrees that disciplinary action is appropriate,, a Notice of Violation is prepared which outlines any violations of Board laws and rules and offers the Respondent an opportunity to accept the Executive Director's proposed settlement.⁵¹ If the Respondent accepts the settlement by returning the signed Notice of Violation to staff, the matter is placed on the agenda for the next Board meeting, where the Board must approve the settlement terms.

If the settlement is not accepted, the matter proceeds to further settlement negotiations and/or formal hearing at the State Office of Administrative Hearings (SOAH).

Informal Conferences

In some cases, staff may recommend that an informal conference be held. An informal conference is an opportunity for the Respondent to present information to a TBAE panel concerning the disciplinary case. The Board has adopted procedures regarding informal conferences in Rules §§1.166, 3.166, and 5.176. A Respondent is not entitled to an informal conference. Rather, informal conferences are held at staff's discretion. Generally, an informal

⁴⁷ Tex. Occ. Code §1051.501

⁴⁸ See Tex. Occ. Code §§1051.451 and 1051.751

⁴⁹ Tex. Occ. Code §1051.505

⁵⁰ See 22 Tex. Admin Code §§ 1.175, 3.175, and 5.185

⁵¹ Tex. Occ. Code §1051.453

conference will be offered only in matters for which disputed factual circumstances can be better addressed in person. If an informal conference is offered, the Executive Director and Board Chair will identify the attendees; the Chair determines whether a Board member's attendance is necessary and, if so, selects a Board member, while the Executive Director selects any other attendees. Most often, an informal conference will be attended by the Executive Director, the General Counsel, investigative staff, and a Board member, in addition to the Respondent and their representatives. Depending upon the results of the informal conference, the proposed settlement may be revised or kept the same, or the disciplinary action dismissed. The informal conference recommendation is not binding, and the Respondent may request a formal hearing.

The Formal Hearing Process

If a disciplinary action is not disposed of through acceptance of a settlement or informal conference, a Respondent is entitled to a formal hearing before the Board can take disciplinary action. ⁵² The Board's hearings are held before the State Office of Administrative Hearings (SOAH). SOAH is an independent state agency created by the legislature to provide independent consideration of administrative hearings.

The Board's hearings are governed by Texas Government Code Chapter 2001, also known as the Administrative Procedure Act. Under Government Code §2001.051, a Respondent is entitled to notice of at least 10 days prior to the initiation of a hearing at SOAH. A formal hearing is a civil proceeding, not a criminal one. Therefore, in order to be successful, Board staff must prove any allegation by a "preponderance of the evidence" rather than "beyond a reasonable doubt" or "clear and convincing evidence." Under this standard, the factfinder is required to "find for the party that, on the whole, has the stronger evidence, however slight the edge may be."⁵³

The general counsel represents the Board in SOAH hearings and presents witness testimony and documentary evidence in support of the Board's allegations. The Respondent is entitled to respond and to present evidence and argument on each issue involved in the case. The parties present their cases to a SOAH Administrative Law Judge (ALJ) who hears the evidence and is responsible for preparing a proposal for decision (PFD) at the conclusion of the hearing

A PFD contains the ALJ's findings of fact, conclusions of law (based on the Board's laws and rules), as well as a recommended sanction if the ALJ finds that a violation has occurred. This PFD is presented to the Board for entry of a final order. The ALJ's factual findings are binding upon the Board and cannot be changed other than to correct technical errors.⁵⁴ In other words, the ALJ has final authority to determine "what happened."

However, the Board has final authority to determine conclusions of law. If the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions, or the ALJ relied upon a previous decision that is incorrect or should be changed, the Board may modify a conclusion of law.⁵⁵ In other

⁵² See Tex. Occ. Code §§ 1051.401 and 1051.455

⁵³ Black's Law Dictionary (11th ed. 2019)

⁵⁴ *See* Tex. Govt. Code §2001.058(e)

⁵⁵ *Id*.

words, the Board has final authority to determine how the law applies to the findings of fact made by the ALJ. This authority also extends to the penalties enforced if a violation is found; while the ALJ will make a recommendation for discipline, the Board has final authority to determine the appropriate sanction to be imposed.

After a PFD has been issued by the ALJ, it is presented to the Board for consideration at a Board meeting. The general counsel will present the PFD to the Board and make recommendations regarding acceptance of the ALJ's conclusions of law and proposed sanction. Because the ALJ has final authority on findings of fact, the Board members may not re-litigate the evidence and must limit consideration to the ALJ's findings. Upon motion by the Board members, a vote is held to consider entry of an order adopting all or part of a PFD. If the Respondent disagrees with the decision, they may file a motion for rehearing, and if unsuccessful, appeal the decision to state district court.⁵⁶

Board Members Disqualifying Themselves (Recusal)

Generally, Board members should disqualify (recuse) themselves from participating in an investigative inquiry and any subsequent formal hearing if they are in a close personal or financial relationship with somebody involved in the matter or stand to gain or lose from the outcome of the hearing. For cases in which a Board member casually knows the subject of the complaint but does not believe that this relationship would influence his or her decision, this determination should be made on the record at the beginning of the consideration of the matter. If the subject of the complaint or his or her attorney has no objections, the inquiry can move forward. When in doubt, a Board member should confer with the Executive Director and General Counsel for clarification and should consider recusal if any reasonable ground for potential bias is present.

Confidentiality

In general, members must preserve confidentiality of any confidential information obtained in the course of service on the Board. Members shall endeavor to maintain the lawyer-client privilege regarding any information obtained in the course of consulting with legal counsel.

It is recognized that the role of Board members may include representing TBAE in the community. Such representations must be respectful of and consistent with the member's duty of confidentiality.

Every Board member shall respect the confidentiality of information about TBAE regardless of the source of the confidential information. A Board member may not use confidential information to his/her personal advantage or to the disadvantage of any person.

A Board member is in breach of their duties with respect to confidentiality when information is used or disclosed for purpose other than those identified by the Board or the agency.

⁵⁶ See Tex. Govt. Code §§2001.146 and 2001.171.

Chapter 7. Internal Management Issues

Travel Procedures/Policy

You must have approval prior to travel except for regularly scheduled Board meetings and Committee meetings to which you are assigned. For out of state travel, prior approval is required. Board members will be reimbursed actual lodging expenses, supported by hotel bills, and will be reimbursed for meals, mileage, and supplemental expenses at the state rates.

Per Diem

Compensation in the form of a per diem for travel and other expenses incurred in the performance of official duties will be paid at the rate of \$30.00 per day. Board members who are also state employees may not be eligible to receive per diem compensation.

Travel Claims

Rules governing reimbursement of travel expenses for Board members are outlined in government policies and regulation. All expenses must be claimed on the appropriate travel expense claim forms. We urge you to submit travel expense forms immediately after returning from a trip and not later than 10 days following the trip. Original receipts are required for some reimbursements. Refer to TBAE Policy EA-005, Travel Policy and Procedures

Board Staff and their Responsibilities

TBAE staff consists of 19 members:

Staff member responsibilities include the following:

- 1. Assist Board members in carrying out their duties and responsibilities;
- 2. Organize and manage the board meetings;
- 3. Maintain the records for licensees, disciplinary proceedings, etc.;
- 4. Maintain the records of applicants for licensure;
- 5. Review applications for licensure;
- 6. Issue new licenses:
- 7. Renew licenses;
- 8. Investigate complaints;
- 9. Assist consumers with questions and concerns;
- 10. Assist licensees and applicants with questions and concerns;
- 11. Answer questions from government officials, the media (when appropriate), other licensing boards;
- 12. Develop the budget and monitor expenditures;
- 13. Assist the Board in developing Regulations.

Chapter 8. NCARB, CLARB & CIDQ

National Council of Architectural Registration Boards (NCARB)

In May 1919, fifteen architects from thirteen states came together to form an organization that would become NCARB. The purpose was to facilitate the exchange of information on examining, licensing and regulating architects; to foster uniformity in licensing and practice laws; to facilitate reciprocal licensing; to discuss the merits of various examination methods as well as the scope and content of licensing exams; and, to improve the education standards of the architectural profession in the United States.

Today NCARB works as a Council of Member Boards to safeguard the health, safety and welfare of the public and to assist Member Boards in carrying out their duties. NCARB administers the ARE exam and AXP programs; develops and recommends eligibility standards for applicants for architectural registration; develops and recommends standards regulating the practice of architecture through publication of Legislative Guidelines, Model Law, and Model Regulations; provides a certification process and architectural registration programs to Member Boards and represents the interests of Member Boards before public and private agencies.

NCARB is a nonprofit organization comprised of the architectural registration boards of the 50 United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. These are known as Member Boards.

Member Boards elect NCARB officers and directors and work together to formulate NCARB policies, Model Laws and Model Regulations. NCARB's mission is to assist Member Boards in protecting the health, safety and welfare of the public. It provides many significant services to interns, architects, and Member Boards. For more information, visit their Web site at www.ncarb.org. There is a private "Members Only" site which you may also access after setting up a password.

TBAE is also a member of Region 3, one of six regions nationwide. There is an annual regional meeting in March or April that is held in conjunction with six regions of NCARB. There is also an annual national meeting of all boards in June.

Members of TBAE Board have traditionally been involved in NCARB activities on the regional and national level. Board members and the Executive Director attend the regional and national meetings held at various locations in the United States.

The Council of Landscape Architectural Registration Boards (CLARB)

CLARB works to protect the public's health, safety and welfare by establishing and promoting professional licensure standards. Its members are the licensure boards across the United States, Canada and Puerto Rico. CLARB prepares, administers and scores the Landscape Architect Registration Examination (L.A.R.E.) which assesses the ability of prospective licensees to protect the public's health, safety and welfare.

CLARB also manages a professional information system called the CLARB Council Record, through which landscape architects document and verify their education, experience,

examination and licensure history. The Record helps reduce barriers to mobility by streamlining the initial and reciprocal licensure processes.

The Landscape Architect Accreditation Board (LAAB) is the accrediting organization for landscape architectural programs. As such, the LAAB develops standards to objectively evaluate landscape architectural programs and judges whether a school's landscape architectural program is in compliance with the accreditation standards.

The Council for Interior Design Qualification, Inc. (CIDQ)

CIDQ exists to credential interior designers who have met minimum education and experience requirements and who have passed the NCIDQ Exam. CIDQ is the only organization to provide an internationally recognized certification exam for the profession of interior design. CIDQ is responsible for the initial review of experience and educational requirements for qualification for the NCIDQ examination, a prerequisite for interior design registration in Texas.

The Council for Interior Design Accreditation (CIDA), founded in 1970, is an international non-profit organization that accredits postsecondary interior design education programs in the United States and Canada. The voluntary accreditation process uses internationally recognized educational standards to review programs.

